

Connecticut Rules

CODE OF EVIDENCE

Article VII. OPINIONS AND EXPERT TESTIMONY

As amended through January 1, 2011

§ 7-2. Testimony by Experts

A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.

COMMENTARY

Section 7-2 imposes two conditions on the admissibility of expert testimony. First, the witness must be qualified as an expert. See, e.g., *State v. Wilson*, 188 Conn. 715, 722, 453 A.2d 765 (1982); see also, e.g., *State v. Girolamo*, 197 Conn. 201, 215, 496 A.2d 948 (1985) (bases for qualification). Whether a witness is sufficiently qualified to testify as an expert depends on whether, by virtue of the witness' knowledge, skill, experience, etc., his or her testimony will "assist" the trier of fact. See *Weinstein v. Weinstein*, 18 Conn. App. 622, 631, 561 A.2d 443 (1989); see also, e.g., *State v. Douglas*, 203 Conn. 445, 453, 525 A.2d 101 (1987) ("to be admissible, the proffered expert's knowledge must be directly applicable to the matter specifically in issue"). The sufficiency of an expert witness' qualifications is a preliminary question for the court. E.g., *Blanchard v. Bridgeport*, 190 Conn. 798, 808, 463 A.2d 553 (1983); see Section 1-3 (a).

Second, the expert witness' testimony must assist the trier of fact in understanding the evidence or determining a fact in issue. See, e.g., *State v. Hasan*, 205 Conn. 485, 488, 534 A.2d 877 (1987); *Schomer v. Shilepsky*, 169 Conn. 186, 191- 92, 363 A.2d 128 (1975). Crucial to this inquiry is a determination that the scientific, technical or specialized knowledge upon which the expert's testimony is based goes beyond the common knowledge and comprehension, i.e., "beyond the ken," of the average juror. See *State v. George*, 194 Conn. 361, 373, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 963, 105 L. Ed. 2d 968 (1985); *State v. Grayton*, 163 Conn. 104, 111, 302 A.2d 246, cert. denied, 409 U.S. 1045, 93 S. Ct. 542, 34 L. Ed. 2d 495 (1972); cf. *State v. Kemp*, 199 Conn. 473, 476-77, 507 A.2d 1387 (1986).

The subject matter upon which expert witnesses may testify is not limited to the scientific or technical fields, but extends to all specialized knowledge. See, e.g., *State v. Correa*, 241 Conn. 322, 355, 696 A.2d 944 (1997) (FBI agent may testify about local cocaine distribution and its connection with violence).

In *State v. Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998), the state supreme court directed trial judges, in admitting scientific evidence, to serve a gatekeeper function in determining whether such evidence will assist the trier of fact. *Id.*, 73. In *Porter*, the court opted for an approach similar to that taken by the United States supreme court in construing the relevant federal rule of evidence in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). *State v. Porter*, *supra*, 61, 68.

In accordance with *Porter*, the trial judge first must determine that the proffered scientific evidence is reliable. *Id.*, 64. Scientific evidence is reliable if the reasoning or methodology underlying the evidence is scientifically valid. *Id.* In addition to reliability, the trial judge also must determine that the proffered scientific evidence is relevant, meaning that the reasoning or methodology underlying the scientific theory or technique in question properly can be applied to the facts in issue. *Id.*

In *Porter*, the court listed several factors a trial judge should consider in deciding whether scientific evidence is reliable. *Id.*, 84-86. The list of factors is not exclusive; *id.*, 84; and the operation of each factor varies depending on the specific context in each case. *Id.*, 86-87.

Subsequent to both *Daubert* and *Porter*, the United States supreme court decided that, with respect to Fed. R. Evid. 702, the trial judge's gatekeeping function applies not only to testimony based on scientific knowledge, but also to testimony based on technical and other specialized knowledge, and that the trial judge may consider one or more of the *Daubert* factors if doing so will aid in determining the reliability of the testimony. *Kumho Tire Co., Ltd. v. Carmichael*, U.S. , 119 S. Ct. 1167, 1174-75, 143 L. Ed. 2d 238 (1999). The Code takes no position on such an application of *Porter*. Thus, Section 7-2 should not be read either as including or precluding the *Kumho Tire* rule.